UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of: TRUSTEES OF GRINNELL COLLEGE Employer, and UNION OF GRINNELL STUDENT DINING WORKERS Petitioner	Case No. 18-RC-228797 November 20, 2018

PETITIONER'S OPPOSITION TO EMPLOYER'S MOTION TO STAY ELECTION OR TO IMPOUND BALLOTS

The Union of Grinnell Student Dining Workers ("Petitioner") files this statement in opposition to the Trustees of Grinnell College's ("Employer") motion for a stay of the November 27, 2018 election, or, in the absence of a stay, impoundment of all ballots at the conclusion of the election ("Motion"). The Employer has waited two weeks, until just four business days before the election, to file its motion, and now requests that the Board forestall the very election it has helped arrange. As explained below, the Employer's Motion should be denied because it fails to meet the high bar for extraordinary relief required by 29 C.F.R. § 102.67(j).

Procedural History

On October 9, 2018, the Petitioner filed an RC petition seeking a "unit of all student employment positions; excluding positions in dining services, and all supervisors and guards, as defined in the Act." Petition in 18-RC-228797. The petition sought to add this proposed unit to the

existing bargaining unit of student workers in the Dining Services department via an *Armour-Globe* election. The Employer maintains that the unit sought by the Petitioner is not appropriate because the student workers are not employees under Section 2(3) of the Act and the workers in the petitioned-for unit do not share a community of interest. On November 5, 2018, the Regional Director issued a Decision and Direction of Election ("DDE"), directing an election on November 27, 2018. On November 19, 2018, the Employer filed the Motion, requesting a stay of the election or, in the alternative, the impoundment of ballots.

Argument

I. *Pratt Institute* is not controlling.

In *Pratt Institute*, 332 NLRB 1205 (2003) (herein *"Pratt"*), the Board ordered a stay of a representation hearing because the Board had granted review in another case, *Brown University*, Case No. 01-RC-21368, which raised the same issue. In the case at hand, an application of *Pratt* would be incorrect.

First, the stay in *Pratt* was issued before the representation hearing had begun, saving the Board significant time and resources. Here, a hearing has already been conducted and concluded. A stay would only save the Board the minimal costs of conducting an election.

Second, the Board decided *Pratt* before the April 14, 2015 amendment to the Board's Representation Case Procedures, which requires that extraordinary relief not be granted unless a party can make a "*clear* showing that it is *necessary* under the particular circumstances of the case" (emphasis added). 29 C.F.R. § 102.67(j)(2). As explained below, the Employer has failed to meet this burden.

Third, *Pratt* was decided on the grounds that the legal issue was already under consideration in cases pending before the Board. The Employer in this case asks the Board to disrupt the election process before even beginning to analyze the underlying legal issues and while there is no relevant case before the Board.

Despite arguments by the employers in the respective cases, neither *Trustees of Columbia University*, Case No. 02-RC-225405 (herein *"Columbia II"*) nor the motion for summary judgment in *University of Chicago*, Case No. 13-CA-217957 made on July 10, 2018 (herein *"Chicago"*) will immediately lay to rest whether student workers are employees for the purposes of Section 2(3) of the Act, as decided by the Board in *Trustees of Columbia University*, 364 NLRB No. 90 (2016) (herein *"Columbia I"*).

Unlike the petitioned-for unit in this case, the petitioned-for unit in *Columbia II* included no student employees. The petitioner in *Columbia II* sought to represent "[a]ll postdoctoral researchers who have received a doctorate or its professional equivalent who provide services to the university, including Postdoctoral Research Scientists, Postdoctoral Research Scholars, Postdoctoral Research Fellows, Associate Research Scientists, and Associate Research Scholars." *Columbia II* Decision and Direction of Election (herein "*Columbia II* DDE") at 1. Notably, none of the individuals in the *Columbia II* unit are students of Columbia University, for none of them are working toward degrees as part of their job. *Columbia II* DDE at 2. The only mention of *Columbia I* in the *Columbia II* DDE is the finding in the former that postdoctoral researchers who work on externally funded grants are employees under Section 2(3) of the Act. Whether external grant funding affects the employee status of workers receiving it is not an issue in the current case.

Additionally, on November 19, 2018, Columbia University reached an agreement with the petitioner in both *Columbia I* and *Columbia II*, which mandates that "within three business days of acceptance, Columbia will withdraw its request for review in the postdoctoral case pending before the NLRB[1] and recognize both certified units."[2] Every indication is that the proposed agreement will be ratified in the coming days, which would render the case before the Board, and the Employer's argument in this regard, moot.

A Board decision on the motion for summary judgment in *Chicago* will also not have the immediate impact on *Columbia I* that would justify the extraordinary relief requested by the Employer. The Board can either grant the motion for summary judgment, and issue an appropriate Decision and and Order requiring the respondent to bargain in good faith with the union, or deny the motion and direct Counsel for the General Counsel to litigate the issues raised in the complaint before an administrative law judge of the Board. If the Board grants the motion for summary judgment, the Employer's argument on about *Chicago* will be moot. Even if the Board denies the motion and directs a hearing before an administrative law judge, the employer will unlikely be allowed to relitigate the issue of whether student employees are employees under Section 2(3) of the Act, as the Board ordinarily does not allow relitigation of issues raised in the underlying representation case. *See, e.g. Cranesville,* 366 NLRB No. 18; *Duquesne*, 366 NLRB No. 27; and *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146. Even if the issue is relitigated, the Employer only requests a stay until the motion for summary judgment is ruled on; that ruling cannot overturn *Columbia I.* In sum, regardless of the Board's decision on the motion for summary judgment in *Chicago*, the employer's argument on the impact of such a decision on *Columbia I* is highly

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[1] i.e., *Columbia II.*

[2] *See* Lee C. Bolinger, "Columbia and UAW Reach Framework Agreement" (Nov. 19, 2018), *available at* https://news.columbia.edu/content/2048 (attached as Exhibit A).

speculative, and falls far short of the stringent requirement set forth in 29 C.F.R. § 102.67(j)(2).

II. The Employer fails to show the potential extraordinary harm from which it needs relief.

The Employer has not, in any way, shape, or from, managed to link an election and a tally of ballots to the harms of "enormous tension, divisiveness, and fracturing of relations among students and faculty on many campuses, all of which threatens to permanently alter an educational model that for many decades has well served students, the educational mission of Grinnell College, and higher education generally" it alleges. Motion at 5–6. Indeed, the purpose of the Act is to prevent "industrial strife" caused, not by the Board's election procedures, but by "the denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining." 29 U.S.C. § 151. That purpose will be ill-served should the Board grant the Employer's Motion.

III. The Employer's Motion makes a mockery of the processes of the Board.

Finally, the Employer's Motion rests on the inappropriate and unsubstantiated assumption that the Board "is poised to" overrule, or at least significantly modify, *Columbia I*, and in doing so conclude that student workers are not employees under Section 2(3) of the Act. Motion at 2. It is on the basis of this assumption alone that the Employer seeks extraordinary relief; in doing so, the Employer is essentially calling for a total disregard for the Board's rules and regulations in representation cases, and thus makes a mockery of the Board's deliberative processes.

Columbia I was decided after months of hearings, briefs (including *amicus* briefs), and careful deliberations. The Employer's suggestion that a mere change in the composition of the Board is enough to disregard the analysis in *Columbia I* is not only incredibly cynical, but also hugely presumptuous. The Employer is counting on two new Board members to prejudge a case and

overturn precedent simply because they have been appointed by President Trump. Surely any decision on whether student workers are employees under Section 2(3) would involve the same methodical legal reasoning and detailed analysis of case-specific facts exhibited in the *Columbia I* decision; the Employer cannot know how the Board would rule in such a case.

Over the last eighty years, the Board has established a procedure for hearing, elections, briefing, and review in representation cases through careful rulemaking made with the authority granted to it by Congress. The Employer asks the Board to ignore its deliberative process, the arguments of the parties in this case, and the facts of this case, and to abandon all pretense of acting fairly and without regard to political influence.

Conclusion

The Employer's arguments in favor of granting a stay or the impoundment of ballots rest on the assumption that the Board will soon modify its stance on the whether students can be employees under Section 2(3). As demonstrated above, there are no cases pending which would give the Board such an opportunity, and even if there were, the Employer's conclusion relies on the unfounded assumption that the Board would have prejudged the cases. Never once does the Employer provide clear evidence of any *particular* circumstances of *this case* which would *necessitate* the extraordinary relief it so desperately seeks. Accordingly, the Petitioner requests that the Employer's motion to stay the election or to impound the ballots be denied.

Respectfully submitted this 20th day of November, 2018.

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Petitioner
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EXHIBIT A

Columbia and UAW Reach Framework Agreement

November 19, 2018

Statement from Columbia University President Lee C. Bollinger and Provost John H. Coatsworth

The Framework Agreement announced today by Columbia and representatives of the United Auto Workers sets forth mutually agreed upon principles to guide negotiations toward collective bargaining agreements on wages, hours, and other working conditions for Columbia's student research and teaching assistants and for our diverse postdoc community.

The Framework is the product of a dialogue between Columbia and UAW representatives that followed outreach by the University to the union. The agreement includes substantive principles reflecting the respective interests of the parties. For Columbia, chief among these interests is that any collectively bargained agreement will not infringe upon the integrity of the University's academic decision making and that Columbia will retain the exclusive right to manage the institution consistent with our educational and research mission.

The Framework specifies that bargaining on contracts covering student assistants and postdoctoral researchers will begin no later than February 26, 2019, and that the union will not strike or otherwise disrupt Columbia's operations prior to April 6, 2020, at the earliest.

In communications with the Columbia community, we have consistently underscored the importance of ensuring that Columbia remains a place where every student can achieve the highest levels of intellectual accomplishment and personal fulfillment. The Framework Agreement preserves our ability to honor that fundamental commitment.

Lee C. Bollinger

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President

COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK

John H. Coatsworth
Provost

116th Street and Broadway, New York, NY 10027

Framework Agreement Between the UAW and Columbia University

November 19, 2018

Mutually Agreed Terms

(1) The Graduate Workers of Columbia-UAW (GWC-UAW) and Columbia Postdoctoral Workers of Columbia-UAW (CPW-UAW) and Columbia have agreed to negotiate in good faith toward initial collective bargaining agreements covering student Teaching and Research Assistants and Postdoctoral Fellows (and related employees).

(2) Columbia will recognize the Graduate Workers of Columbia-UAW (GWC-UAW) and the Columbia Postdoctoral Workers-UAW (CPW-UAW) as the exclusive bargaining representatives on rates of pay, wages, hours of employment and other conditions of employment for the individuals included in the two respective NLRB-certified bargaining units.

(3) The GWC-UAW and CPW-UAW agree that any collective bargaining agreement to be negotiated with Columbia must not infringe upon the integrity of Columbia's academic decision-making or Columbia's exclusive right to manage the institution consistent with its educational and research mission.

(4) The GWC-UAW and CPW-UAW and Columbia agree that any grievance and arbitration processes contained in any collective bargaining agreement must accord deference to Columbia's right to control academic concerns and issues.

(5) The GWC-UAW and CPW-UAW agree that Columbia must maintain the integrity of its Equal Opportunity and Affirmative Action (EOAA) processes, regardless of any collective bargaining agreement. The GWC-UAW and CPW-UAW and Columbia also recognize that the unions can play a constructive role in advocating for or representing survivors of sexual assault and harassment and other forms of discrimination and may negotiate for additional procedures available to members of the bargaining units, provided they do not undermine the integrity or conflict with the University's processes.

(6) The GWC-UAW and CPW-UAW and Columbia also agree that while the Unions will serve as exclusive bargaining agent for individuals in the bargaining units on matters of rates of pay, wages,

hours of employment and other conditions of employment, elected student councils, associations and societies (such as the Postdoctoral Society) will continue to serve as representatives of their constituencies on academic and governance issues.

(7) Columbia and the GWC-UAW and CPW-UAW will commence bargaining on contracts covering student assistant and postdoctoral researcher bargaining units no later than February 25, 2019.

(8) Columbia and the GWC-UAW and CPW-UAW agree that this framework is intended to promote good-faith bargaining toward initial contracts. To that end, the GWC-UAW and CPW-UAW, on behalf of its members, agents and affiliated entities, agrees that it and they shall not authorize or condone any strike, sympathy strike, work stoppage, slowdown, or other interference with Columbia's operations by employees covered by this Agreement until April 6, 2020 at the earliest.

(9) This framework will go into effect if it is accepted by the GWC-UAW and CPW-UAW no later than Wednesday, November 28, 2018, after which it will be considered null and void. Within three business days of acceptance, Columbia will withdraw its request for review in the postdoctoral case pending before the NLRB and recognize both certified units referenced in paragraph 2.

(10) By agreeing to this Framework Agreement, neither Columbia nor the GWC-UAW nor CPW-UAW alters in any way or waives any existing right or positions under applicable law, nor will either assert against the other a claim that such action constitutes a waiver of any existing right or position.

Lee C. Bollinger, Announcement

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